

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 August 2014

Case Nos.: 2014-STA-00013
2014-STA-00014
2014-STA-00015
2014-STA-00016

In the Matter of:

OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION ex rel.
JAMES ERIC FOXX, JASON LAFONE,
KEITH WIKE, Estate of CHRISTOPHER
PATRICK LYONS,

Complainants,

v.

GAINES MOTOR LINES, INC.,
TIM GAINES, RICK TOMPKINS,

Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND
ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, §31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“STAA”) and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978 and Part 18.

On November 8, 2013, the Occupational Safety and Health Administration (“OSHA”) concluded its investigation of Complainants’ formal complaints of discrimination and issued Findings and a Preliminary Order finding that Respondents violated the STAA by terminating and taking other adverse actions against Complainants. Specifically, OSHA found that Complainants had cooperated in an investigation conducted by the United States Department of Transportation (“DOT”) and that, as a result of their cooperation, Respondents terminated their employment.

OSHA ordered the immediate reinstatement of Foxx, LaFone, and Wike to their former positions with all pay, benefits, and other rights they had prior to their unlawful discharge.

On November 26, 2013, the case was appealed by the Respondents to the Office of Administrative Law Judges. A Notice of Hearing was issued and a formal hearing was scheduled to begin at 9:00 AM, Monday, August 11, 2014 in Winston-Salem, North Carolina. On August 4, 2014, the parties advised that they resolved the claim. They submitted a Joint Motion to Approve Settlement Agreement and to Dismiss with Prejudice, with supporting documents, to the undersigned.

Implementing Federal regulations at 29 CFR §1978.111(d)(2) provides that “At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ, if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement agreement must be filed with the administrative law judge or the ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the STAA. See - *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-36 (ARB Dec. 16, 2009); *Thompson v. G&W Transportation Co., Inc.*, 90-STA-25 (Sec’y Oct.24, 1990) Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 CFR §1978.111(e).

After review of the Settlement Agreement and the administrative record, this Administrative Law Judge finds that the Settlement Agreement complies with the standard required under the STAA and is approved.

Accordingly, it is **ORDERED** that –

1. The Settlement Agreement is **APPROVED**; and,
2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

DANA ROSEN
Administrative Law Judge

DR/jcb
Newport News, Virginia